IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16..3..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

Writ Petition No.36901 of 2006
and M.P.Nos.1 and 2 of 2006

Diamond Jubilee Higher Secondary
School, rep. by its Secretary &
Correspondent, Cutcherimedu,
Gobichettipalayam, Erode District. .. Petitioner

vs.

1. The Union of India, rep. by
Secretary, Ministry of Law,
Justice and Company Affairs,
Shastri Bhavan, New Delhi.

2. The State of Tamil Nadu,
rep. by Secretary to Government,
Public Department,
Fort St. George, Chennai 9.

3. The District Educational Officer,
Gobi Educational District,
Gobichettipalayam, Erode District.

4. M/s. Square Root Solutions,
rep. by its Manager (HR)
No.17, First Floor, Radhakrishnan Street,
Perundurai, Erode 638 011. .. Respondents

Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of Declaration declaring that the petitioner school which is an Aided Private Recognised School does not come within the purview of either the Tamil Nadu Right to Information Act, 1997 or the Right to Information Act, 2005 (Central Act 22/2005) and consequently alling for the records comprised in proceedings in NaKa.No.4591/A3/06, dated 148.2006 followed by the notice in proceedings Na.Ka.No.4591/A3/2006 on the file of the DEO / Gobichettipalayam/third respondent dated 15.9.2006 and quash the same.

For Petitioner : Mr.R. Krishnamurthi
Senior Counsel for
Mr.V. Ayyadurai

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For Respondent-2 : Mr.M. Sekar, Spl.GP.,
for Mr. D. Balakrishnan AGP

For Respondent 3 : Mr.R.Viswanathan,
A.G.P., (Education)

For Respondent-4 : Mr.R. Venkatavardhan

O R D E R

The writ Petitioner School is an Aided Private Recognised School and the petitioner is seeking for a declaration that either under the Tamil Nadu Right to Information Act, 1997 or the Right to Information Act, 2005 (Central Act 22/2005) [for short, 'RTI Act, 2005] does not apply to the Aided Private School and also for consequential relief for quashing the circular issued by the District Educational Officer, the third respondent, directing the Management to furnish the information sought for on 14.8.2006 and 15.9.2006 by the fourth respondent.

2. I have heard the learned counsels appearing for the parties and have perused the records.

3. The writ petitioner is an Aided Private Recognised school running Higher Secondary pattern under the State Board and they are running classes from VI Std to +2 Course and there are about 2374 students studying in the school. There are 59 teaching staff and all of them have given 100% salary from the aid. Besides the staff for whom aid has been granted, there are other teaching staff and non-teaching staff appointed by the Management who are not getting the aid. In the year 2005-2006, the fourth respondent started a programme in which he trained students in spoken English and this programme was permitted by the Chief Educational Officer. The training programme was an optional one and it was decided to provide the students on a collection of Rs.10/- per month from each student. Admittedly, the petitioner permitted the fourth respondent to offer the training programme in spoken English by conducting extra classes with the understanding that the money collected by the petitioner / Management will be given to the fourth respondent. However, certain misunderstanding took place between the fourth respondent and the petitioner and they discontinued the programme offered by the fourth respondent for the academic year 2006-2007.

4. It is the allegation of the writ petitioner that the fourth respondent was infuriated by the said action and started making complaints against the petitioner. It was thereafter the fourth respondent sought for certain information with reference to the money collected by the petitioner with regard to the programme conducted by it in the petitioner's school. When this letter was not answered, he approached the educational authorities including the third respondent and requested to direct the school management to furnish such information. Apparently, he sought for information in terms of RTI Act,

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2005, which does not apply to them. Thereafter, the fourth respondent sent a letter dated 14.8.2006, which is impugned in this writ petition, stating that the petitioner is bound to furnish the information as it is a public authority coming under the R.T.I Act, 2005. It was also stated that the petitioner School, though may be a private school, is coming within the definition of Non-Governmental Organisation and also, it is substantially financed by the Government. In fact, it has been stated that the salary grant given by the State to the petitioner School was around Rs.8,99,927/- per month. Roughly, the Management is getting Rs.1.1 Crores per annum from the second respondent State Government for the running of the school and, therefore, the funding given by the State is substantial. In view of the same, the petitioner School is a public authority coming under Section 2(h)(d)(ii) wherein "Non-Government Organisation substantially financed" has been included.

5. Once the School comes under the purview of the RTI Act, then under Section 3, all the Citizens shall have the right to information and Section 4 provides for an obligation of public authorities to provide information which have been listed therein. Section 8 provides for exemption from disclosure of information wherein in 8(1)(j), it has been stated that if the information relates to personal information and the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such an information, the same need not be furnished. Section 18 provides for the powers and functions of the Commission and Section 19 provides for appeal against the orders passed by the Public Information officer to an appellate authority. Non-disclosure of any information will result in penalty.

6. For the letter written by the third respondent dated 14.8.2006, there was no reply and only after reminder, the writ petitioner took the stand that they will give the information after the appropriate amount is paid and also furnish the information, which according to them, are available with the School. Once again, the third respondent sent a communication dated 21.8.2006 stating that the answers were all in negative nature and the answers are not satisfactory and that, therefore, because of their obstinate stand, for any consequences, the Headmaster and the Correspondent are bound to be responsible. In the meanwhile, the fourth respondent sent another letter dated 23.8.2006 stating that certain information are not proper and they are bound to give the correct answer. Once again, this forced the writ petitioner to send a reply dated 28.8.2006 enclosing certain answers. It was thereafter the writ petitioner was informed by the third respondent by a communication dated 05.9.2006 stating that they are bound give answers to the questions raised by the fourth respondent and they have also appointed one Deputy Inspector of Schools and four Assistants to collect all the files and gather the details sought for by the fourth

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respondent. Again, a letter dated 07.9.2006 was sent to them by the third respondent listing out eight further questions for which answers were sought for. Once again, another letter dated 13.9.2006 was sent to the Correspondent and to the Headmaster of the petitioner School stating that since they are responsible for answering questions, they are bound to give answers to all the questions. When the writ petitioner did not give reply, a further letter dated 15.9.2006 was sent to them stating that they are bound to give answers to the further questions raised by the Department. In the meanwhile, the School Management addressed the State Information Commission stating that the Department should collect the money for providing information. It is thereafter, the present writ petition has been filed praying for declaration that both the State Act and the Central Act will not apply to the petitioner School and the resultant communication sent by the Department was also to be quashed.

7. In the present case, this Court is not concerned with the Tamil Nadu Right to Information Act of 1997 since the Central Act has already come into force, which is more wide and has got greater teeth than the earlier State enactment. Right to information or the right to freedom of information refers to an individual's right or freedom to seek public information where information means any material relating to the affairs, administrative or decision of a public authority. It is mandatory that the flow of the information must be free.

8. In a lecture delivered by Dr.Justice A.R. Lakshmanan, the Retired Judge of the Supreme Court on 19.8.2006 at Chennai, the learned Judge traced the History of Right to Information Act, 2005 in the following words:

> "This right traces its origin since 1948 March, when the United Nations convened a conference in Geneva on the subject matter of Freedom of information that was attended by 54 countries which ultimately led the General Assembly of United Nations to declare the freedom of information a fundamental human right, and declaration was made on December 10, 1948. In 1960, the Economic and Social Council of the United Nations adopted a Declaration of Freedom of Information. Sweden became the first country in the world to enact a provision for access to official information for its citizens. Many countries later adopted this principle and drafted legislations incorporating the same.... Each individual shall have appropriate access to information concerning the decision making process. Effective access to judicial and administrative proceedings, including redress and remedy should be provided. The Right to Information Act, 2005 is a recognition of such fundamental rights making possible the participation of the people in the decision making process in our democracy. Access to information on laws mandated

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government services and government expenses are fundamental for the people to hold Governments more accountable for their performance."

9. Recently, Mrs.Justice Prabha Sridevan, in her lecture delivered at the law faculty in the University of Madras on 29.3.2007, highlighted the importance of RTI Act and its necessity to apply in the Non-Governmental Organisations in the following lines:

"Ideally the new Act, Right to Information Act should apply to all the sections of society and not actually to the governmental sector. Non-governmental organisations like NGOs, charitable trusts or trade unions should be just as accountable and as transparent as the Government in a developing democracy. There should be proactive distribution of information."

10. Except by stating that, the Act does not apply, there is no other contention raised by the petitioner Management. In fact, undoubtedly, the petitioner Management is a public authority under Section 2(h)(d)(ii) and the fact that more than a Crore of Rupees is spent by the State covering the 100% salary to all the Teachers for whom posts have been sanctioned, clearly shows that the School receives substantial funding. Once the Act covers, there is no escape for the petitioner Management from providing the information sought for by any citizen including the fourth respondent, who may or may not have any grievance in the past relationship and only escape, if at all is available, is the exemption provided under Section 8 of the RTI Act.

11. The learned Senior Counsel appearing for the petitioner stated that some of the information are not relevant for which also information is sought for. Then, the only course open to the Management is to approach and challenge any order by which they are directed to be provided, by filing an appeal under Section 19 of the RTI Act and establish that such an information has no relationship to any public activity or interest and it is an unwarranted information of the privacy of an individual. Even in those cases, the final word rests on the State Public Information Officer or the appellate authority's satisfaction that the larger public interest justifies the disclosure of such an information.

12. In this factual background of the matter, the contentions raised by the writ petitioner are misconceived and have to fail miserably. It is too late in the date to hold that the RTI Act, 2005 will not apply to the petitioner School, which is a Non-Governmental Organisation, and that it has been substantially funded by the State. The petitioner School has no prejudice by furnishing information that is sought for by the fourth respondent or any other citizen in the future. If for some reason, the petitioner has taken the stand that they have

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already provided necessary information, they can always take their stand and reply to the authority and for other reasons, if such an information are not to be furnished, they can have the remedies provided under the Act.

13. In the light of the above, there is nothing wrong in the impugned order issued by the third respondent. Hence, the writ petition shall stand dismissed. Consequently, connected Miscellaneous Petitions will stand closed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Secretary
Government of India
Secretary, Ministry of Law,
Justice and Company Affairs,
Shastri Bhavan, New Delhi.

2. The Secretary to Government,
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+ One cc to Mr. V. Ayyadurai, Advocate sR 17100
+ One cc to Mr. R. Venkatavardhan Advocate sR 16783

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